THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on : 03.07.2007

CRL.REV.P.255/2000

SMT SARASWATI AND OTHERS Petitioners

- versus -

SHRI SHIV SHANKAR AND OTHERS ...Respondent

Advocates who appeared in this case:

For the Petitioners : Mr K.S. Bindra, Sr Advocate with
Mr Manjeet Singh Ahluwalia.

For the Respondents : Mr Mohit Mathur.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in Digest? Yes

BADAR DURREZ AHMED, J

1. This criminal revision petition has been filed on behalf of the complainant party against an order of acquittal passed by the learned Additional Sessions Judge, Delhi on 01.04.2000. The State has chosen not to file an appeal against the said order of acquittal. By virtue of the impugned judgment and order dated 01.04.2000 all the accused – Shiv Shankar, Virender, Narender, Ashok Kumar and Satya Prakash (Respondent Nos 1 to 5

herein) were acquitted, after giving them the benefit of doubt, in respect of the offences punishable under Sections 308 / 452 / 506 / 323 /325 /34 IPC arising out of FIR No.298/92 registered at Police Station Narela.

2. As per the challan filed in the case, on 03.11.1992 the statement of Smt Saraswati (petitioner No.1 herein) was recorded to the effect that she resided at 1573, Pana Maumpur, Delhi with her parents and was a student of class XII. That on that date at about 4.20 p.m. she was present at her said house when her neighbours Shiv Shankar, Virender and Ashok Kumar entered the house and started beating her. It was further stated that they dragged her out of the house and that her mother Smt Omwati (petitioner No.3 herein) and her aunt Smt Krishna (petitioner No.4 herein) came to her rescue. In the meanwhile, Narender arrived at the scene with iron rods, jelli, sword and lathi and handed the same to the others who used the same to assault the three women. It was also stated that when her father Surat Singh (petitioner No.2 herein) returned from duty, Shiv Shankar exhorted the others that he should also be killed and that he would manage the affairs. On such exhortation all the accused persons started beating Surat Singh as well. It was stated that Surat Singh received serious head injuries and fell down on the ground and that he also received injuries on his entire body. It was also stated that Smt Krishna also received head injuries. Smt Omwati was also stated to have received injuries. It was mentioned that the assailants had caused injuries due

to old enmity and that after assaulting and beating the members of the complainant party, the accused left the scene and Shiv Shankar proclaimed that this was sufficient for the time being and that they would kill the entire family in future. On the basis of this statement of Smt Saraswati, the police registered the case. Since the offence of Section 308 IPC was also involved, the case was committed for trial to the court of Sessions. Charges had been framed against the accused under Sections 452/308/323/325/506/34 IPC. Since the accused pleaded not guilty, the matter went up for trial. 15 prosecution witnesses were examined. The witnesses of importance were PW3 (Saraswati), PW4 (Surat Singh), PW5 (Omwati) and PW6 (Krishna). All of whom were members of the complainant party. PW7 Ram Chander deposed about the arrest of the accused persons as also with regard to the preparation of the site plan. PW13 Dr Ashok Tyagi and PW15 Dr Anil Sahni deposed with regard to the MLC of Omwati.

3. The learned Additional Sessions Judge discussed the evidence of all the witnesses and came to the conclusion that the prosecution was unable to prove its case. It gave the benefit of doubt to the accused and acquitted them of all the charges.

4. The learned counsel for the petitioners pointed out that the trial court did not return any finding with regard to the offences punishable under

Sections 308 and 506 IPC. With regard to the offences punishable under Sections 323/325 IPC, the learned counsel appearing on behalf of the petitioners submitted that the trial court completely misdirected itself in holding that, firstly, the injuries were simple and not grevious and secondly, in coming to the conclusion that since only an offence punishable under Section 323 IPC was involved, the same being non-cognizable, the investigation conducted by the police without obtaining an order from the Magistrate was illegal and, therefore, the accused could not be convicted for the offence under Section 323 IPC. The exact manner in which the trial court considered this issue is as under:

> "The doctors had opined the injuries received by Surat Singh, Saraswati and Krishna to be simple caused by blunt object which makes out only the offence under sec.323 IPC which is a non-cognizable offence. It is settled law that the police will have to obtain an order from the concerned Metropolitan Magistrate under Section.155(2) Cr.P.C. and in the absence of such order, the investigation, if any, conducted by the police in respect of that offence is illegal. In the present case, the police has not obtained any such order from the Magistrate. As such the investigation conducted by the police in respect of an offence punishable under Sec.323 IPC, anon-cognizable offence, is illegal and as such accused persons cannot be convicted for the offence under Sec.323 IPC."

5. It was contended by the learned counsel for the petitioners that this is clearly contrary to the provisions of Section 155(4) of the Code of Criminal Procedure, 1973 which reads as under:

> "155 (4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable."

6. Since there were other offences other than Section 323 and the other offences were cognizable, by virtue of Section 155(4) of the Code of Criminal Procedure, 1973, the case was deemed to be cognizable case. Therefore, according to the learned counsel for the petitioners the investigation conducted by the police could not have been held to be illegal. Consequently, it was submitted that the accused could not have been acquitted under Section 323 IPC merely on this ground.

7. It was also contended on behalf of the learned counsel for the petitioners that the trial court completely ignored Exhibit PW13/B (MLC of Omwati) which was in the handwriting of Dr. Ashok Tyagi (PW13) which indicated that the nature of injury on Smt Omwati was grevious. In the presence of such a recording on the MLC in the hand writing of PW13 himself, it could not have been held by the trial court that no grevious injury was caused. The learned counsel for the petitioners also contended that there was also no finding with regard to the offence under Section 452 IPC.

8. The learned counsel appearing on behalf of the respondents advanced submissions in support of the impugned order passed by the trial court.

9. With regard to the submission that there is no finding in respect of Section 452 IPC, I find that this is not correct. The trial court has specifically examined this issue with regard to the question of place of occurrence. In this context, the trial court examined the deposition of PW8 (Chander Singh) as well as PW7 (Ram Chander). According to the testimony of PW8 (Chander Singh), the place of occurrence was near the Chowk Chauda and not in the house of the complainant. The trial court observed that even PW3 Saraswati had admitted in her cross-examination that the incident had taken place in Chowk Chauda in front of her house. It is on the basis of this, that the trial court concluded that this proves that the accused persons had not tresspassed into the house of the complainant as alleged and, therefore, there could be no conviction of the accused persons for the offence punishable under Section 452 IPC. This is a clear finding recorded by the trial court negating conviction under Section 452 IPC. In this context, the trial court also noted that the site plan had been prepared at the instance of the PW7 (Ram Chander) who was not even present on the spot at the time of the incident as admitted by him in his deposition. Consequently, the trial court, and in my view, correctly held that this fact creates a serious dent in the prosecution case and makes the site plan doubtful.

10. With regard to the submission that the trial court had erred in recording that the investigation was illegal, I am of the view that the learned counsel for the petitioners is right. At the time when the police was

confronted with the case, the alleged offences included cognizable as well as non-cognizable offences. That being the case, Section 155(4) of the Code of Criminal Procedure, 1973 would be applicable and the entire case would have to be deemed to be cognizable one. In such eventuality it was open to the police to investigate without obtaining any order from a Magistrate. Consequently, the trial court was in error in holding that the investigation conducted by the police in respect of the offence under section 323 IPC was illegal.

11. Having so held, does it mean that the order of acquittal has to be set aside and re-trial has to be ordered?

12. Before I examine this question, it would be relevant to also consider the related question that no specific findings have been returned with respect to the offences under Sections 308/506 IPC. I find that while there is no specific discussion of these offences there is a general discussion throughout the impugned judgment with regard to the incident itself. The conclusion arrived at by the trial court is that there was great doubt as to whether the incident occurred at all and as to whether the accused persons were involved in the same. The trial court took note of the fact that the first call that had been received by the police about an alleged incident was in

respect of a quarrel amongst ladies as indicated by PW9 Lady H.C. Sheela. It is in this context that the trial court observed :-

> "It is surprising that inspite of the admitted fact that the quarrel was going on between the ladyfolk not a single lady is an accused in the present case."

13. Apart from this, the trial court also observed that the presence of Virender and Ashok Kumar at the scene was also doubtful if not entirely ruled out because of their presence at their respective places of work. In sum, it could be said that the trial court acquitted the accused on the basis of (i) the place of occurrence being uncertain; (ii) injuries being simple, therefore, the investigation was bad (this aspect has already been discussed above); (iii) accused Virender and Ashok Kumar were not present on the scene and were on duty; (iv) there were serious contradictions in the depositions of the prosecution witnesses; (v) it had been alleged that a group of people had gathered at the time of the incident but not a single independent public witness had been examined and all the witnesses of the incident were interested witnesses; (vi) the weapons allegedly used did not match the injuries; (vii) there was previous enmity between the complainant party and the accused; and (viii) there was great delay in the recording of the statements of the injured.

14. For all these reasons, the trial court came to the conclusion that there was enough doubt to acquit the accused. It is clear that the powers of the High Court in exercise of its revisional jurisdiction in respect of a revision petition filed by a private party against an order of acquittal is very limited. The revisional court does not function as a court of appeal and cannot reappraise evidence. It cannot also interfere with an order of acquittal unless it is an exceptional case of some procedural irregularity or overlooking of material evidence or misreading of the same which is manifest and which results in flagrant miscarriage of justice. These principles are well settled by the Supreme court in various decisions starting from ***D Stephens v Nosibolla : AIR 1951 SC 196***. The other decisions being ***K Chinnaswamy Reddy v State of Andhra Pradesh & Another : AIR 1962 SC 1788; Mahendra Pratap Singh v Sarju Singh : (1968) 2 SCR 287; Ramu v Jagannath : 1995 SCC (Cri) 181; Vimal Singh v Khuman Singh & another : 1998 SCC (CRI) 1574 ; Hydru v State of Kerala : (2004) 13 SCC 374***.

15. Keeping these principles in mind, this court has to consider as to whether the incorrect findings of the trial court to the effect that the police investigation was illegal would call for interference with the impugned order. It must be remembered that the well settled principles are that not only must there be manifest illegality or glaring defect in the procedure but there must also have been a flagrant miscarriage of justice. I have examined this matter

in great detail and have considered all aspects particularly as some findings of the trial court are not correct as already pointed out above. If it is assumed that the police investigation was legal, which it was, then clearly the offence under Section 323 IPC ought to have been discussed by the trial court. That was not done. But the trial court discussed in general as to whether the accused were at all involved in the incident. The trial court came to the conclusion that the PWs 3 to 6 were not entirely reliable as they were interested witnesses. There was admitted previous enmity between two groups. The trial court also came to the conclusion that the place of occurrence itself was indeterminate. The trial court also concluded that Virender and Ashok Kumar could not have been present on the scene at the time of the alleged incident. The delay with regard to the recording of the statements of the injured was also considered as a material factor by the trial court in concluding that there was doubt as to whether the accused were at all involved in the incident. So, although it may be established that this was not a case of merely simple injuries but also of a grevious injuries, it does not in any way go to fill in the gap of linking the accused with the said injuries.

16. Considering the matter in this light I find that although there are errors in the trial court judgment, it has not resulted in any miscarriage of justice. Therefore, no interference with the impugned judgment is called for.

This revision petition is dismissed.

BADAR DURREZ AHMED
(JUDGE)

July 03, 2007
M